

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

<b>OAL FILE NUMBERS</b>	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2010-0520-02E</b>
For use by Office of Administrative Law (OAL) only			
NOTICE  AGENCY WITH RULEMAKING AUTHORITY Food and Agriculture		REGULATIONS  2010 MAY 20 PM 3:55 OFFICE OF ADMINISTRATIVE LAW	
AGENCY FILE NUMBER (If any) PH10047			

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
<b>OAL USE ONLY</b>	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) European Grapevine Moth Interior Quarantine		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
<b>SECTION(S) AFFECTED</b> (List all section number(s) individually. Attach additional sheet if needed.) TITLE(S) 3		ADOPT  AMEND 3437(b)  REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))			
<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)			
<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____			
<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Stephen S. Brown		TELEPHONE NUMBER (916) 654-1017	FAX NUMBER (Optional) (916) 654-1018 E-MAIL ADDRESS (Optional) sbrown@cdfa.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

Nathan Dechoretz, Deputy Secretary for Administration and Finance

For use by Office of Administrative Law (OAL) only

In Title 3, Division 4, Chapter 3, amend Section 3437 to read:

**Section 3437. European Grapevine Moth Interior Quarantine.**

A quarantine is established against the following pest, its hosts and possible carriers.

(a) Pest. European Grapevine Moth (*Lobesia botrana*).

(b) Area Under Quarantine.

(1) In Fresno County. Continued

(2) In Mendocino County. Beginning at the intersection of W School Way and E School Way; then, starting easterly along E School Way to its intersection with East Rd; then, southerly along East Rd to its intersection with Road B; then, starting easterly along Road B to its intersection with Black Bart Trl; then, starting easterly along Black Bart Trl to its intersection with Kirk Dr; then, starting northeasterly along Kirk Dr to its southwestern most point; then, easterly along an imaginary line to the intersection of Elledge Ranch Rd and State Hwy 20; then, starting northeasterly along State Hwy 20 to its intersection with the Mendocino County line; then, starting southerly along the Mendocino County line to its intersection with an unnamed road at 39.125473 latitude and 123.087225 longitude; then, starting westerly along the unnamed road to its intersection with Mill Creek Rd; then, southwesterly along an imaginary line to its intersection with Twining Rd and an unnamed road at 39.116659 latitude and 123.145359 longitude; then, starting southwesterly along the unnamed road to its intersection with Eastside Rd; then, starting southeasterly along Eastside Rd to its intersection with Morrison Creek; then, southwesterly along Morrison Creek to its intersection with the Russian River; then, starting northwesterly along the Russian River to its intersection with Robinson Creek; then, starting westerly along Robinson Creek to its intersection with Goat Rock Rd; then, northwesterly along Goat Rock Rd to its intersection with State Hwy 253; then, starting southwesterly along State Hwy 253 to its intersection with Robinson Creek Rd; then, starting westerly along Robinson Creek Rd to its intersection with an unnamed road at 39.092138 latitude and 123.265482 longitude; then, starting westerly along the unnamed road to its intersection with Robinson Creek Rd and an unnamed road 39.071998 latitude

and -123.093028 longitude; then, southeasterly along an imaginary line to its intersection with an unnamed road at 39.062193 latitude and -123.133200 longitude; then, starting southerly along said road to its intersection with Eastside Rd; then, starting southeasterly along said road to its intersection with 39.056575 latitude and -123.140939 longitude; then, southwesterly along an imaginary line to its intersection with the southeastern most point of Riverside Dr; then, starting northwesterly along said drive to its intersection with Sanel Dr; then, starting southeasterly along said drive to its intersection with Henry station Rd; then, southwesterly along said road to its intersection with McNab Ranch Rd; then, starting southwesterly along said road to its intersection with Lane Dr; then, southwesterly along said drive to its intersection with Lakeside Dr; then, starting westerly along said drive to its intersection with Feliz Creek Dr; then, starting northerly along said drive to its intersection with McNab Ranch Rd; then, northwesterly along an imaginary line to its intersection with an unnamed road at 39.050264 latitude and -123.257629 longitude; then, starting westerly along said road to its intersection with an unnamed road at 39.077519 latitude and -123.295229 longitude; then, starting northerly along said road to its intersection with an unnamed road at 39.097088099949 latitude and -123.28159297196 longitude; then, starting southwesterly along the unnamed road to its intersection with Lower Gap Rd; then, starting northwesterly along Lower Gap Rd to its intersection with an unnamed road at 39.163643 latitude and -123.342267 longitude; then, starting northeasterly along the unnamed road to its intersection with Masonite Industrial Rd; then, starting northwesterly along Masonite Industrial Rd to its intersection with Running Springs Ranch Rd; then, starting westerly along Running Springs Ranch Rd to its intersection with Orr Springs Rd; then, starting easterly along Orr Springs Rd to its intersection with Main Ranch Rd; then, starting northwesterly along Main Ranch Rd to its intersection with the beginning of an unnamed road at the intersection of Main Ranch Rd and Find Yer Way; then, starting northeasterly along the unnamed road to its intersection with the southwestern most point of Smith Ln; then, northeasterly along Smith Ln to its intersection with Bell Arbes Dr; then, easterly along Bell Arbes Dr to its

intersection with Uva Dr; then, starting northeasterly along Uva Dr to its intersection with W School Way; then, northeasterly along W School Way to the point of the beginning.

(3) In the County of Merced; in the Snelling area: Beginning at Dry Creek and an unnamed road at 37.523686 latitude and -120.561935 longitude; then, northerly along said road to its intersection with an unnamed road at 37.536270 latitude and -120.561750 longitude; then, westerly along said road to its intersection with an unnamed road at 37.536430 latitude and -120.565428 longitude; then, northerly along said road to its intersection with Keyes Rd; then, starting easterly along said road to its intersection with 37.554113 latitude and -120.545151 longitude; then, northerly along an imaginary line to its intersection with an unnamed creek at 37.571190 latitude and -120.545126 longitude; then, easterly along an imaginary line to its intersection with Olsen Rd at 37.571156 latitude and -120.523103 longitude; then, northeasterly along said road to its intersection with Los Cerritos Rd; then, starting northwesterly along said road to its intersection with the boundary line of Merced County; then, starting northeasterly along said boundary line to its intersection with Robinson Rd; then, southeasterly along an imaginary line to its intersection with Snelling Rd at 37.449752 latitude and -120.431793 longitude; then, starting northeasterly along said road to its intersection with the Main Canal; then, starting southwesterly along said canal to its intersection with 37.448769 latitude and -120.502221 longitude; then, westerly along an imaginary line to its intersection with State Hwy 59 at 37.449058 latitude and -120.502567 longitude; then, starting northeasterly along said highway to its intersection with Youd Rd; then, starting westerly along said road to its intersection with 37.462587 latitude and -120.512041 longitude; then, northerly along an imaginary line to its intersection with the Merced River at 37.469153 latitude and -120.512121 longitude; then, starting northwesterly along said river to its intersection with an unnamed road at 37.471759 latitude and -120.530414 longitude; then, northerly along said road to its intersection with Turlock Rd; then, westerly along said road to its intersection with 37.491592 latitude and -120.548520 longitude; then, northerly along an imaginary line to its intersection with an unnamed road at 37.517116 latitude and -120.548378 longitude; then, westerly along said road to

its intersection with Dry Creek; then, starting northerly along said creek to the point of beginning.

(3) In Napa, Solano and Sonoma counties. Beginning at the intersection of US Hwy 101 and Dry Creek Rd; then, easterly along Dry Creek Rd to its intersection with Healdsburg Ave; then, starting northerly along Healdsburg Ave to its intersection with Passalacqua Rd; then, starting easterly along Passalacqua Rd to its intersection with Foppiano Rd; then, starting southeasterly along Foppiano Rd to its intersection with Deichmann Rd; then, starting northeasterly along Deichmann Rd to its end; then, northeasterly along an imaginary line to its intersection with 38.637175 latitude and -122.826652 longitude; then, southeasterly along the imaginary line to its intersection with the westernmost end of Cook Way; then, starting northerly along Cook Way to its intersection with Chalk Hill Rd; then, starting northerly along Chalk Hill Rd Brack Rd and Chemise Rd; then, starting easterly along Chemise Rd to its intersection with 38.647689 latitude and -122.948557 longitude; then, northeasterly along an imaginary line to its intersection with Jochinsen Rd and Wine Creek Rd; then, northeasterly along Wine Creek Rd to its intersection with Grape Creek; then, starting northeasterly along said creek to its intersection with W Dry Creek Rd; then, starting northeasterly along said road to its intersection with an unnamed road at 38.661056 latitude and -122.940972 longitude; then, northeasterly along said road to its intersection with Dry Creek; then, southeasterly along said creek to its intersection with an unnamed road at 38.659998 latitude and -122.936563 longitude; then, northeasterly along said road to its intersection with Dry Creek Rd; then, northwesterly along said road to its intersection with 38.668829 latitude and -122.932543 longitude; then, northeasterly along an imaginary line to its intersection with Petersen Creek at 38.689261 latitude and -122.902306 longitude; then, starting southeasterly along said creek to its intersection with Geysersville Av; then, southeasterly along said avenue to its intersection with W C Meyer Rd; then, easterly along said road to its intersection with an unnamed road; then, northerly along said road to its intersection with the Russian River; then, starting southeasterly along said river to its intersection with an unnamed road at 38.682033 latitude and -122.853146 longitude; then, northeasterly along said road to its intersection with State Hwy 128; then, southeasterly along said road to its intersection with Geysers Rd; then, starting

northeasterly along said road to its intersection with Red Winery Rd; then, starting southeasterly along said road to its intersection with Squibb Rd; then, northeasterly along said road to its northeastern most point; then, southeasterly along an imaginary line to its intersection with Pine Flat Rd and Deer Creek; then, northeasterly along an imaginary line to its intersection with the northwestern most point of Bluegum Creek; then, starting southeasterly along said creek to its intersection with McDonnell Creek; then, starting southeasterly along said creek to its intersection with Maacama Creek then, starting southerly along said creek to its intersection with State Hwy 128; then, starting southnortheasterly along State Hwy 128 to its intersection with Bechaud Rd; then, northeasterly along Bechaud Rd to its northeastern most end; then, northeasterly along an imaginary line to its intersection with the westernmost beginning of Ida Clayton Rd; then, starting easterly along Ida Clayton Rd to its intersection with 38.675388 latitude and -122.656858 longitude; then, southeasterly along an imaginary line to its intersection with Kellogg Creek and the Robert Louis Stevenson State Park boundary line; then, starting northerly along the Robert Louis Stevenson State Park boundary line to its intersection with the Sonoma County boundary line; then, starting southeasterly along the Sonoma County boundary line to its intersection with the Napa County boundary line; then, northeasterly along the Napa County boundary line to its intersection with State Hwy 29; then, starting southerly along State Hwy 29 to its intersection with Livermore Rd; then, southeasterly along an imaginary line to its intersection with the end of Aetna Springs Rd; then, southeasterly along an imaginary line to the westernmost beginning of Summit Lake Dr; then, starting southeasterly along Summit Lake Dr to its intersection with 38.609410 latitude and -122.475560 longitude; then, southeasterly along an imaginary line to its intersection with Ink Grade Dr at 38.602280 latitude and -122.452271 longitude; then, starting southeasterly along Ink Grade Dr to its intersection with Howell Mountain Rd; then, starting northwesterly along Howell Mountain Rd to its intersection with Chiles Pope Valley Rd; then, starting northeasterly along Chiles Pope Valley Rd to its intersection with Maxwell Creek; then, starting northerly along Maxwell Creek to its intersection with Pope Creek; then, starting southeasterly along Pope Creek to its intersection with the Lake Berryessa Recreation Area boundary line; then, starting southerly along the Lake Berryessa Recreation Area boundary line to its intersection with

Steele Canyon Rd at 38.491657 latitude and -122.196591 longitude; then, starting southeasterly along Steele Canyon Rd to its intersection with Lakeshore Dr; then, southwesterly along an imaginary line to its intersection with Capell Valley Rd and 38.455066 latitude and -122.209986 longitude; then, starting southeasterly along Capell Valley Rd to its intersection with Monticello Rd; then, starting southwesterly along Monticello Rd to its intersection with Circle Oaks Dr; then, southeasterly along an imaginary line to its intersection with Blue Ridge Rd and Gates Canyon Rd; then, starting easterly along Gates Canyon Rd to its intersection with Pleasants Valley Rd; then starting southeasterly along Pleasants Valley Rd to its intersection with Foothill Dr; then, starting southeasterly along Foothill Dr to its intersection with Alamo Dr; then, starting southeasterly along Alamo Dr to its intersection with Peabody Rd; then, starting southerly along Peabody Rd to its intersection with Air Base Pkwy; then, starting westerly along Air Base Pkwy to its intersection with ~~Walters Rd; then, southerly along Walters Rd to its intersection with E Tabor Ave; then, easterly along E Tabor Ave to its intersection with Sunset Ave; then, starting southerly along Sunset Ave to its intersection with Grizzly Island Rd; then, starting southerly along Grizzly Island Rd to its intersection with Hill Slough; then, starting northwesterly along Hill Slough to its intersection with Suisun Slough; then, starting southerly along Suisun~~ the boundary of Fairfield City at 38.272382 latitude and -121.975093; then, starting southerly along said boundary to its intersection with Petersen Rd; then, westerly along said road to its intersection with Lawler Ranch Pkwy; then, starting southerly along said parkway to its intersection with State Hwy 12; then, starting southeasterly along said highway to its intersection with Scally Rd; then, southwesterly along an imaginary line to its intersection with Grizzly Island Rd and the northern shoreline of Montezuma Slough; then, starting westerly along said shoreline to its intersection with Grizzly Bay; then, southwesterly along Grizzly Bay to its intersection with western shore of Suisun Bay; then, starting southerly along the western shore of Suisun Bay to the Carquinez Strait; then, starting southwesterly along the Carquinez Strait to San Pablo Bay; then, starting northerly along the shore of San Pablo Bay to the Petaluma River; then, starting northwesterly along the Petaluma River to its intersection with Adobe Creek; then, starting easterly along Adobe Creek to its northernmost end; then, northeasterly along an imaginary line to the southwestern most

point of the Glen Ellen City boundary line; then, northwesterly along an imaginary line to the southernmost end of South Fork Matanzas Creek; then, starting southwesterly along South Fork Matanzas Creek to its intersection with Sonoma Mountain Rd; then, starting westerly along Sonoma Mountain Rd to its intersection with Pressley Rd; then, northwesterly along an imaginary line to its intersection with the southernmost end of Hidden Oaks Rd; then, northwesterly along an imaginary line to its intersection with the southernmost end of Hidden Acres Rd; then, northerly along Hidden Acres Rd to its intersection with Hidden Springs Rd; then, starting northwesterly along Hidden Springs Rd to its intersection with Peracca Rd; then, westerly along Peracca Rd to its intersection with Grange Rd; then, starting northerly along Grange Rd to its intersection with Matanzas Creek; then, starting westerly along Matanzas Creek to its intersection with Bennett Valley Rd; then, starting northwesterly along Bennett Valley Rd to its intersection with Yulupa Ave; then, starting northwesterly along Yulupa Ave to its intersection with Bethards Dr; then, starting northeasterly along Bethards Dr to its intersection with Summerfield Rd; then, starting northerly along Summerfield Rd to its intersection with Montgomery Dr; then, northeasterly along Montgomery Dr to its intersection with Mission Blvd; then, starting northwesterly along Mission Blvd to its intersection with Montecito Blvd; then, starting southwesterly along Montecito Blvd to its intersection with Fountain Grove Pkwy; then, starting northwesterly along Fountain Grove Pkwy to its intersection with Industrial Dr; then, starting westerly along Industrial Dr to its intersection with Cleveland Ave; then, starting southeasterly along Cleveland Ave to its intersection with Piner Rd; then, starting westerly along Piner Rd to its intersection with Olivet Rd; then, northerly along Olivet Rd to its intersection with W Olivet Rd; then, westerly along W Olivet Rd to its intersection with Oakwild Ln; then, northerly along Oakwild Ln to its intersection with Denner Ranch Rd; then, westerly along Denner Ranch Rd to its intersection with Denner Rd; then, starting northerly along Denner Rd to its intersection with River Rd; then, starting westerly along River Rd to its intersection with McPeak Rd; then, starting northwesterly along McPeak Rd to its intersection with Sunnyside Dr; then, northeasterly along an imaginary line to its intersection with Mount Jackson Resort Rd at 38.538271 latitude and -122.941874 longitude; then, starting southwesterly along Mount Jackson Resort Rd to its intersection



with Sweetwater Springs Rd; then, starting northwesterly along Sweetwater Springs Rd to its intersection with McCray Ridge Rd; then, northeasterly along an imaginary line to its intersection with Cloud 8 Rd and Palmer Creek Rd; then, starting northeasterly along Palmer Creek Rd to its intersection with Mill Creek Rd; then, starting ~~northeasterly~~westerly along Mill Creek Rd to its intersection with Puccioni Rd; then, ~~starting northwesterly along Puccioni Rd to its intersection with 38.600325 latitude and 122.935946 longitude; then, northeasterly along an imaginary line to its intersection with Wallace Creek Rd and Chicken Ridge Rd; then, starting northeasterly along Chicken Ridge Rd to its intersection with Big Ridge Rd; then, northwesterly along an imaginary line to its intersection with an unnamed creek at 38.621612 latitude and 122.919456 longitude; then, starting southeasterly along the unnamed creek to its intersection with 38.620320 latitude and 122.906202 longitude; then, northeasterly along an imaginary line to its intersection with W Dry Creek Rd at 38.624313 latitude and 122.897724 longitude; then, northeasterly along an imaginary line to its intersection with Dry Creek at 38.625808 latitude and 122.895523 longitude; then, southeasterly along Dry Creek to the southwestern most end of Provence Ln; then, northeasterly along Provence Ln to its intersection with Dry Creek Rd; then, southeasterly along Dry Creek Rd to its intersection with Pozzan Rd; then, northerly along Pozzan Rd to its intersection with 38.629385 latitude and 122.883128 longitude; then, easterly along an imaginary line to its intersection with US Hwy 101 at 38.629438 latitude and 122.878028 longitude; then, southerly along US Hwy 101~~ Soward Ranch Rd; then, northerly along an imaginary line to the point of the beginning.

(c) [no change]

(d) [no change]

Note: Authority: Sections 407 and 5322, Food and Agricultural Code

Reference: Sections 407, 5322, 5761, 5762 and 5763, Food and Agricultural Code

May 19, 2010

## FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing adoption of a regulation is necessary for an immediate action to avoid serious harm to the public peace, health, safety or general welfare, within the meaning of Government Code Section 11342.545 and Public Resources Code Section 21080. Government Code Section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

The Department does not have a record of any person requesting a notice of regulatory actions under Government Code Section 11346.4(a)(1). Therefore, the provisions of Government Code Section 11346.1(a)(2) do not appear to be applicable to this emergency action as no one has requested such notice.

### Description of Specific Facts Which Constitute the Emergency

On September 15, 2009, DNA analysis confirmed a suspect *Lobesia botrana* (European Grapevine Moth (EGVM)) larva taken from a trap in Oakville, Napa County, California. This was the first identification of EGVM in the United States. Furthermore, the September 15, 2009 DNA confirmation caused the Department to re-examine an unidentified larva taken from a trap at the same location on September 17, 2008. EGVM DNA sequencing information was not available in 2008 but was available by fall of 2009. With this information on hand, the Department confirmed the 2008 find as EGVM, indicating that an infestation had been present in that area for as long as a year. Additionally, crop damage was reported in the area in 2008 and vineyards were treated for an unknown pest in 2008 and 2009. Significant crop damage was reported in 2009 and at least one grower lost his entire crop.

Following the identification of EGVM, Department staff began an intensive spoke and wheel delimitation trapping program around the find site and on the border with Sonoma County. Eight adults (from five different sites) and 34 larvae or puparia were trapped or collected and identified at 29 separate sites in Napa and Sonoma counties. The trapping survey was discontinued for the winter because the EGVM present entered diapause and will not emerge until the spring. The delimitation results suggested that there might be two distinct pockets of infestation – one on the eastern side of the city of Napa and the other between Oakville and Rutherford and St. Helena. These areas are home to some of the most well-known vineyards in the United States. As a result, the Department adopted Section 3437, European Grapevine Moth Interior Quarantine as an emergency action which was effective on March 3, 2010. The Department also adopted an EGVM eradication regulation as an emergency action and has continued to systematically search for all life stages of EGVM. Additionally, the Department is using the same triggers for establishing or expanding EGVM quarantine areas as it has used for the light brown apple moth: the detection of eggs, larva, pupa or two adult moths within three miles of each other and within one life cycle.

Effective April 20, 2010, an emergency amendment expanded the quarantine area in Napa County by 57 square miles for a total of approximately 219 square miles under quarantine. Effective May 4, 2010, an emergency amendment expanded the quarantine area in Napa and Sonoma counties by approximately 113 square miles for a total of approximately 332 square miles.

Effective May 13, 2010, an emergency amendment expanded the existing regulated areas in Napa, Solano and Sonoma counties by approximately 827 miles, and created new regulated areas in Fresno of approximately 96 square miles and in Mendocino of approximately 140 square miles for a total of approximately 1395 square miles.

On May 1 and 7, 2010 (Pest and Damage Records (PDRs) #1598627 and 1586239), adult male EGVM were trapped in the Healdsburg area of Sonoma County. These EGVM were trapped within

three miles of one another and within one life cycle. This meets the regulatory protocol for expanding the quarantine area in this area of Sonoma County.

On May 6, 2010 (PDRs #1598960 and 1598961), adult male EGVM were trapped in the Fairfield area of Solano County. These EGVM were trapped within three miles of one another and within one life cycle. This meets the regulatory protocol for expanding the quarantine area in this area of Solano County.

On May 3 and 10, 2010 (PDRs #1542935 and #1555218), adult male EGVM were trapped in the Ukiah area of Mendocino County. These EGVM were trapped within three miles of one another and within one life cycle. This meets the regulatory protocol for expanding the quarantine area in this area of Mendocino County.

On May 10 and 12, 2010 (PDRs #1518581, 1518582, 1518583 and 1519199), adult male EGVM were trapped in the Snelling area of Merced County. These EGVM were trapped within three miles of one another and within one life cycle. This meets the regulatory protocol for establishing a new quarantine area in this area of Merced County.

The original recommendation of the United States Department of Agriculture's (USDA) Technical Working Group (TWG) was that the Department should establish a five-mile buffer zone surrounding any EGVM detection sites. Following discussions between the Department and USDA, it was agreed that the Department would establish three-mile buffer zones. However, the TWG met on April 14, 2010 and recommended that the Department either place traps at the rate of 49 per square mile in a two-mile arc around the three-mile buffers or extend the buffer zones to five miles. Since this level of trapping is unsustainable by the Department, the Department is now extending all quarantine boundaries out to a five-mile radius from any detection sites used as an epicenter.

EGVM are found in southern Asia, Europe, North Africa, Anatolia, the Caucasus and in South America (Chile where it was first identified in 2008). Adult EGVM are 6 to 8 mm long with a wingspan of about 10 to 13 mm. However, their size is greatly affected by larval food quality. The first flight of adults occurs in spring when daily average air temperature is above a minimal threshold temperature of 10°C for 10 to 13 days. High temperature (over 20°C) and low humidity (40-70% relative humidity) provide optimal conditions for moth activity. The second flight period begins in summer. Adults may be hard to discover during the day and may be noticed only when they take flight after being disturbed. Within a day or two of mating, females begin to oviposit on the blossoms, leaves, and tender twigs of grapevines. The female lays 300 or more eggs at a rate of 35 per day. First generation eggs are laid on the flower buds or pedicels of the vine while second generation eggs are laid on individual grapes. Eggs hatch in seven to eleven days in spring and three to five days in summer.

The number of generations in a given area is fixed by photoperiod together with temperature. The moth achieves two generations in northern cold areas and usually three generations in southern temperate areas, but as many as five generations have been reported.

First generation larvae feed on bud clusters or flowers and spin webbing around them before pupating inside the web or under a rolled leaf. If heavy flower damage occurs during the first moth generation, the affected flowers will fail to develop and yield will be low. Second generation larvae enter the grapes and feed before pupating inside the grape. Larvae of the third generation, the most damaging, feed on ripening grapes, migrating from one to another and spinning webs. When berries are a little desiccated, the larvae penetrate them, bore into the pulp, and remain protected by the berry peel. Larvae secure the pierced berries to surrounding ones by silk threads in order to avoid falling. Each larva directly damages several berries (one to six), but if the conditions are suitable for fungal or acid rot development, a large number of surrounding berries may also be affected. The third generation larvae leave the fruit and seek shelter under the bark, among dead leaves, or between clods of earth, where they pupate before overwintering. Larvae develop in four to five weeks in

spring and two to three weeks in summer. Pupation lasts nine to twelve weeks in spring, five to seven days in summer, and up to six months in winter.

The EGVM is a serious pest in warm vine-growing countries. Damage by EGVM makes berries attractive to other insects and predisposes the fruit to fungal infection. Larval boring may promote a number of fungal rots, including *Aspergillus*, *Alternaria*, *Rhizopus*, *Cladosporium*, *Penicillium* and especially, grey rot caused by *Botrytis cinerea*. Loss of up to one-third of the vintage has been reported in areas of the Soviet Union, Syria and Yugoslavia. Losses in Israel sometimes reach 40 to 50 percent among table grapes and up to 80 percent for wine grapes. Further loss is due to the time and labor spent in cleaning the grape bunches. When infestations are heavy, work days spent in cleaning the fruit account for 30 to 40 percent of the time of those involved in harvesting.

Losses in grapes produced for raisins and table grapes are expected to be higher than for wine grapes. Additionally, fresh table grapes will likely face restrictions imposed by some trading partners.

There have been 21 interceptions of EGVM at U.S. ports of entry between 1984 and 2007. All but one interception came from baggage. Most interceptions were live larvae on grapes but interceptions also occurred on persimmon and plum (once each) and twice on pomegranates. The most probable method of EGVM movement within California is human-aided on equipment, fruit or infested propagative material. Though larvae are active, their movement is usually limited to between berry clusters, and virgin females' movement rarely exceeds 80 m.

California's 844,000 acres of grapes (526,000 acres of wine grape, 93,000 acres of table grape and 225,000 acres of raisin-type grapes) leads the nation in grape production with 89% of the total. In 2007, grapes were the number two commodity in the state, based on a dollar value of \$3.08 billion dollars, and were among the top three commodities produced in 15 California counties. The retail value of California was valued at \$16.5 billion in 2006. Additionally, EGVM is known to feed on close relatives of plants listed as threatened or endangered in the United States and presents a

potential threat to perhaps 24 species, some of which are known to occur only in California. To protect this source of revenue and the environment, California must do everything possible to prevent the spread of EGVM in the State.

Control measures for EGVM include: insecticides, biological control using *Bacillus thuringiensis* (one study showed 75-90% control), mating disruption (very expensive and only effective if used region wide) and sterile insect technique (not yet reached general commercial application).

This proposed emergency action will expand the regulated areas for EGVM and will include the new detection sites as an epicenter and a buffer zone which extends approximately five miles in each direction from the epicenters. A buffer zone is necessary because the moth can spread naturally (as well as being spread artificially in infested hosts). The proposed boundary lines were drawn jointly by the United States Department of Agriculture, the California Department of Food and Agriculture, and the Fresno, Mendocino, Merced, Napa, Solano, and Sonoma County Agricultural Commissioners. The ability to determine quarantine boundary areas was based upon the information contained in the Final Report of the International Technical Working Group for the European Grape Vine Moth in California, released February 10, 2010. The proposed quarantine area is considered the minimum area around the initial detection sites which should be regulated to prevent artificial spread of EGVM to noninfested areas.

The EGVM has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. While the Department's compliance with the California Administrative Procedure Act and the California Environmental Quality Act (CEQA) are separate actions, they can be interrelated. Although adoption of specific regulatory authority can be the beginning of a project and therefore covered by CEQA, this regulation, for the reasons already set forth, constitutes a specific act necessary to prevent or mitigate an emergency as authorized by Public Resources Code section 21080, subdivision (b) (4) and Title 14, California Code of Regulations Section 15269, subdivision (c). The regulation is also an action required for the

preservation of the environment and natural resources as authorized by Title 14, California Code of Regulations, sections 15307 and 15308.

The effect of the amendment of this regulation will be to implement the State's authority to perform quarantine activities against the EGVM in these new areas of Merced, Mendocino, Solano and Sonoma counties. Any quarantine actions undertaken by the Department will be in cooperation and coordination with the USDA and the Fresno, Merced, Mendocino, Napa, Solano and Sonoma county agricultural commissioners. The amendment will expand regulated areas in Napa, Solano and Sonoma counties by approximately 74 square miles, Mendocino by approximately 39 square miles and establish a new quarantine of approximately 108 square miles in Merced County for a total of approximately 1,616 square miles. It is immediately necessary to implement quarantine actions in order to prevent the artificial spread of EGVM to the uninfested areas of California.

Additionally, the USDA cannot regulate less than the entire State unless the State has a quarantine regulation which is substantially the same as what the federal quarantine requirements are or will be. Now that the USDA has confirmation of EGVM in California, a federal order or quarantine regulation restrictions are imminent. Therefore, it is necessary to amend this regulation as an emergency action.

The Department also relied upon the following documents for this proposed emergency action:

Letter dated May 20, 2010 from David Robinson to A.G. Kawamura.

Letter dated May 4, 2010 from Carol N. Hafner to A.G. Kawamura.

Memorandum dated April 29, 2010, from Tony Linegar to A.G. Kawamura

Memorandum dated April 27, 2010, from Jim Allan to A.G. Kawamura.



Letter dated April 21, 2010 from Cathy V. Neville to A.G. Kawamura.

Memorandum dated April 6, 2010, from David R. Whitmer to Nicholas Condos.

Email dated February 18, 2010, from Eileen Y. Smith to Helene Wright, and its attachments.

Phytopsanitary Advisory No. 02-2010 dated February 16, 2010, California Department of Food and Agriculture.

Final Report of the International Technical Working Group for the European Grape Vine Moth (EGVM) in California, dated February 10, 2010.

Email dated February 8, 2010, from Kevin Hoffman to Stephen Brown and its attachment.

Email dated February 8, 2010, from John Hooper to Stephen Brown and its attachment.

Email dated February 4, 2010, from Eileen Y. Smith to Helene R. Wright and its attachment.

Interim Report of the International Technical Working Group for the European Grape Vine Moth (EGVM) in California, January 11, 2010

Email dated December 23, 2009, from Eileen Y. Smith to Helene R. Wright, and its attachments.

Email dated December 15, 2009, from Stephen Brown to Susan McCarthy, and its attachment, "The European Grapevine Moth."

Email dated December 15, 2009, from Stephen Brown to Susan McCarthy, and its attachment CFR 7-305.

Grape Berry Moth Napa/Portion of Sonoma County Ring Survey 2009, California Department of Food and Agriculture

New Pest Advisory Group (NPAG), Plant Epidemiology and Risk Analysis Laboratory Center for Plant Health Science & Technology, October 14, 2009

Press Release, National Agricultural Statistics Service, October 9, 2009.

California Grape Acreage Report, 2008 Summary, United States Department of Agriculture.

Agricultural Statistical Review, California Agricultural Resource Directory, 2008-2009.

Mini Risk Assessment, Grape berry moth, *Lobesia botrana*, (Denis & Schiffermuller) [Lepidoptera: Tortricidae], September 5, 2003. Robert C. Venette et. al., Department of Entomology, University of Minnesota.

#### Authority and Reference Citations

Authority: Sections 407 and 5322, Food and Agricultural Code.

Reference: Sections 407 and 5322, Food and Agricultural Code.

#### Informative Digest

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread and the feasibility of its control or eradication (FAC Section 5321).

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322).

#### Section 3437. European Grapevine Moth Interior Quarantine.

The effect of the amendment of this regulation will be to implement the State's authority to perform quarantine activities against the EGVM in these new areas of Merced, Mendocino, Solano and Sonoma counties. Any quarantine actions undertaken by the Department will be in cooperation and coordination with the USDA and the Fresno, Mendocino, Merced, Napa, Solano and Sonoma county agricultural commissioners. It is immediately necessary to implement quarantine actions in order to prevent the artificial spread of EGVM to the uninfested areas of California. The amendment will expand regulated areas in Napa, Solano and Sonoma counties by approximately 74 square miles, Mendocino by approximately 39 square miles and establish a new quarantine of approximately 108 square miles in Merced County for a total of approximately 1,616 square miles.

#### Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3437 do not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the Fresno, Mendocino, Napa, Solano and Sonoma County Agricultural Commissioners requested that these changes to the regulation be made.

#### Cost Estimate

The Department has also determined that the regulations will involve no additional costs or savings to any state agency because initial funds for state costs are already appropriated, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code and no costs or savings in federal funding to the State.